

Rule 64D. Garnishment.

(a) Availability of writ of garnishment (pre-judgment and after judgment). Except as provided in Rule 64A and as authorized and permitted therein a writ of garnishment is available as provided for herein.

(a)(i) Before judgment. A writ of garnishment is available as a means of attachment before judgment, other than for defendant's earnings from personal services as hereinafter defined in Subdivision (d)(vii), at any time after the filing of a complaint in cases in which a writ of attachment is available under Rule 64C.

(a)(ii) After judgment or order. A writ of garnishment is available in aid of execution to satisfy a money judgment or other order requiring the payment of money. Such judgments and orders are hereinafter sometimes referred to collectively as "judgment".

(a)(iii) Property subject to garnishment. The property subject to garnishment that a writ may be used to levy upon or affect is all the accrued credits, chattels, goods, effects, debts, choses in action, money and other personal property and rights to property of the defendant in the possession of a third person, or under the control or constituting a performance obligation to the defendant of any third person, whether due or yet to become due at the time of service of the writ of garnishment, which are not exempt from garnishment or exempt under any applicable provisions of state or federal law (hereinafter sometimes referred to as "Property Subject to Garnishment").

(a)(iv) As used in this Rule 64D, the term "plaintiff" means the person or entity seeking by garnishment to attach or execute upon the property of another subject to garnishment and the term "defendant" means the person or entity whose property subject to garnishment is sought to be attached or executed upon by the plaintiff.

(b) Requirements for issuance of a prejudgment writ of garnishment. The clerk shall issue a prejudgment writ or writs of garnishment, with or without notice to the defendant, directed to the person(s) sought to be charged as garnishee(s) and so identified in the affidavit required by Subdivision (b)(i) herein only upon the order of the court in which the action is filed. Several writs may be issued at the same time so long as there is only one named garnishee in a single writ. No writ shall issue unless there is attached thereto the fee required by Subdivision (d)(ii). Subject to Rule 64A, the court shall issue its order for the issuance of a prejudgment writ of garnishment only upon

the occurrence of the following:

(b)(i) A finding that the plaintiff has filed with the clerk an affidavit briefly setting forth: admissible evidence of facts showing that plaintiff's claim is one for which attachment is authorized by Rule 64C; the amount due the plaintiff for which the complaint seeks judgment; that plaintiff has good reason to believe and does believe that defendant has Property Subject to Garnishment in the possession or in the control of or otherwise owing from one or more specified third persons who plaintiff seeks to charge as garnishees or that such third persons plaintiff seeks to charge as garnishees are otherwise indebted to the defendant; and that such Property Subject to Garnishment is not earnings for the personal services of the defendant, or otherwise exempt from garnishment.

(b)(ii) A finding that plaintiff has filed with the clerk a bond or undertaking in the form and amount required for the issuance of a writ of attachment.

(b)(iii) Exceptions to the sufficiency of the sureties on plaintiff's prejudgment garnishment bond or undertaking and the justification of such sureties shall be made within the times and in the manner and with the effect provided in Rule 64C(c).

(c) Requirements for issuance of writ of garnishment after judgment or other order. After the entry of a judgment or other order requiring the payment of money, the clerk of any court from which execution thereon may be issued shall issue a writ or writs of garnishment, without the necessity for an undertaking, upon the filing of an application by the plaintiff: (i) identifying the person sought to be charged as a garnishee; (ii) stating whether such property consists in whole or in part of earnings from personal services as hereinafter defined in Subdivision (d)(vii) of this rule and (iii) stating the remaining amount due on the judgment. Several writs may be issued at the same time so long as there is only one named garnishee in a single writ. No writ shall issue unless there is attached thereto the fee required by Subdivision (d)(ii).

(d) Content and effect of writ; to whom directed (pre-judgment or after judgment).

(d)(i) The writ of garnishment shall be issued in the name of the State of Utah and shall be directed to the person or persons designated in the plaintiff's affidavit or application as garnishee or garnishees, advising each such person that each is attached as garnishee in the action, and commanding each of them not to pay or deliver any non-exempt Property Subject to Garnishment as defined in Subdivision (a)(iii) herein in their possession, custody or control, or part thereof, due or to

become due to the defendant up to the amount remaining due on the judgment (Subdivision (c)(iii)) if the writ is issued after judgment or the amount claimed to be due the plaintiff (Subdivision (b)(i)) if a prejudgment writ is issued, whichever is applicable, and to retain possession and control of all such property until further order of the court or as otherwise discharged or released as provided for herein. In the case of a prejudgment writ, the writ shall contain a designation that it is a prejudgment writ and further note the date and time of expiration of the writ. At the time the writ of garnishment is issued, the clerk shall attach to the writ a notice of garnishment and exemptions, interrogatories to the garnishee and two copies of an application by which the defendant may request a hearing.

(d)(ii) The writ shall require the garnishee to give answers to interrogatories within five (5) business days from the date of service of the writ. Service of a copy of the answers to interrogatories shall be made upon the plaintiff and the original filed with the clerk. The plaintiff shall provide a fee to the garnishee in an amount set by the Legislature. The interrogatories may in substance inquire: (1) whether the garnishee is indebted to the defendant, either in property or in money, whether the same is now due and, if not, when it is to become due; (2) whether there is any Property Subject to Garnishment in the possession, custody or control of the garnishee and, if so, the value of the same; (3) whether the garnishee knows of any debts owing to the defendant, whether due or not, or of any Property Subject to Garnishment belonging to the defendant or in which defendant has an interest, whether in the possession or under the control of the garnishee or another, and, if so, the particulars thereof; (4) whether the garnishee is retaining or deducting any amount in satisfaction of a claim the garnishee has against the plaintiff or the defendant, a designation as to whom such claim relates, and the amount retained or deducted; and (5) as to any other relevant information plaintiff may desire, including defendant's job, position or occupation, defendant's rate and method of compensation, defendant's pay period and the computation of the amount of defendant's accrued disposable earnings attached by the writ.

(d)(iii) If the garnishee has possession, custody or control of Property Subject to Garnishment, the garnishee shall serve within five (5) business days of service of the writ of garnishment upon the garnishee a copy of the writ of garnishment, answers to interrogatories, notice of garnishment and exemptions, and two copies of an application by which a hearing may be requested, upon: (1) the defendant at the last known address of the defendant shown on the records of the garnishee at the

time the writ of garnishment was served on the garnishee; and (2) upon any other person shown upon the records of the garnishee to be a co-owner or having an interest in the property or money garnisheed at the last known address of the co-owner or other interested person as shown on the records of the garnishee at the time the writ of garnishment was served on the garnishee. If that which is garnisheed is an account, such as a bank account or the like, the copies of the writ of garnishment, answers to interrogatories, notice of garnishment and exemptions, and applications for hearing shall be served at the addresses maintained in the records of the garnishee for that account. Service shall be by first class mail or by hand delivery to the defendant and all others. In the answer to interrogatories, the garnishee shall state that the garnishee has mailed or hand delivered a copy of the writ of garnishment, answers to interrogatories, notice of garnishment and exemptions, and two copies of an application by which a hearing may be requested to the defendant and all other persons entitled thereto and state the manner and date of compliance therewith.

(d)(iv) The notice of garnishment and exemptions that is to be served upon the defendant and others entitled to its receipt shall indicate in substance that certain money is exempt from garnishment including but not limited to, Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public assistance (welfare), alimony, child support, certain pensions, and part or all of wages or other earnings from personal services. The notice shall also indicate that the defendant or other person notified must request a hearing within ten days from the date of service of the notice upon the defendant or other person, but in no case later than the time at which the court orders the disposition of the Property Subject to Garnishment provided for herein, which shall not be sooner than ten (10) days from the service of the notice, if such defendant or other person desires to claim any exemption that has not already been reflected in the answers to interrogatories, believes that the writ of garnishment was issued improperly, or that the answers to interrogatories are inaccurate. For purposes of this provision, the date of service shall be the date of mailing, if mailed, or date of delivery, if hand-delivered, and no period for mailing (Rule 6(e)) shall be used in computing the time period.

(d)(v) Priority among writs of garnishment served upon a garnishee shall be in order of their service.

(d)(vi) A writ of garnishment attaching earnings for personal services shall attach only that portion of the defendant's accrued and unpaid disposable earnings hereinafter specified. The writ shall so advise the garnishee and shall direct the garnishee to withhold from the defendant's accrued disposable earnings only the amount attached pursuant to the writ. Earnings for personal services shall be deemed to accrue on the last day of the period in which they were earned or to which they relate. If the writ is served before or on the date the defendant's earnings accrue and before the same have been paid to the defendant, the writ shall be deemed to have been served at the time the periodic earnings accrued;

(d)(vii) "Earnings" or "earnings from personal services" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of a defendant's earnings remaining after the deduction of all amounts required by law to be withheld. For purposes of a garnishment to enforce payment of a judgment arising out of a failure to support dependent children, earnings also include, in addition to those items listed above, periodic payments pursuant to insurance policies of any type, including unemployment compensation, insurance benefit payments, and all gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets or as otherwise modified or adopted by law for the support of dependent children.

(d)(viii) The maximum portion of the aggregate disposable earnings of defendant (if an individual) becoming due the defendant which is subject to garnishment is the lesser of:

(d)(viii)(A) Twenty-five per centum of defendant's disposable earnings (fifty per centum for a garnishment to enforce payment of a judgment arising out of failure to support dependent children) computed for the pay period for which the earnings accrued; or

(d)(viii)(B) The amount by which the defendant's aggregate disposable earnings computed for the pay period for which the earnings accrued exceeds the number of weeks in the period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

(d)(ix) Unless otherwise ordered by the Court, the garnishee shall treat the defendant's earnings becoming due from the garnishee as the defendant's entire aggregate earnings for the purpose of

computing the sum attached by the garnishment.

(e) Service of writ; return; general service (pre-judgment or after judgment). The writ, any order pursuant to subdivision(s) of this rule, and any order pursuant to Rule 64A(3), shall be served upon the garnishee by a sheriff, constable, deputy, or such other person designated by court order and return thereof made in the same manner as a return of service upon a summons. All other service may be by first class mail or hand delivery.

(f) Release or discharge of garnishment (pre-judgment or after judgment). At any time either before or after the service of any writ of garnishment, the defendant may obtain a release or discharge thereof in the same manner and under the same conditions as a release or discharge of a writ of attachment may be obtained under the provisions of Subdivision (f) of Rule 64C. The plaintiff may release a writ of garnishment by filing with the clerk a release of garnishment and serving a copy thereof upon the garnishee.

(g) Answer of garnishee; delivery of property (pre-judgment or after judgment). The garnishee shall, within the time required by Subdivision (d)(ii) hereof, serve upon the court and the plaintiff verified answers to the interrogatories and provide proof(s) of service upon defendant of the copy of the writ of garnishment, answers to interrogatories, the notice of garnishment and exemptions, and the applications by which a hearing may be requested, stating the manner and date of service. The garnishee may also deliver to the officer serving the writ the Property Subject to Garnishment as shown by the answer of the garnishee, and the officer shall make return of such property and money with the writ to the court, to be dealt with as thereafter ordered by the court. Thereupon, the garnishee shall be relieved from further liability in the proceedings, unless the answer shall be successfully controverted as hereinafter provided or the garnishee has willfully failed to serve copies of the writ of garnishment, answers to interrogatories, notice of garnishment and exemptions, and the applications by which a request for a hearing may be made on the defendant and other persons entitled thereto.

(h) Procedure (pre-judgment or after judgment). The defendant or any other person who owns or claims an interest in the property subject to garnishment that is garnisheed may request a hearing to claim any exemption to the garnishment, or to challenge the issuance of the writ or the accuracy of the answers to interrogatories. Such request must be filed within ten days of the service (for purposes

of this provision the date of service shall be the date of mailing if mailed or date of delivery if hand-delivered and no period for mailing pursuant to Rule 6(e) shall be used in computing the time period) of the copy of the materials required to be served by Subdivision (d)(iii) upon the defendant and all others entitled to receive the same. Any person filing a request for hearing shall serve a copy of the request for hearing on the plaintiff, the garnishee, and other persons claiming an interest in the property. The request for a hearing shall be in a form to enable the defendant or other person to specify the grounds upon which the defendant or other person challenges the issuance of the writ or the accuracy of the answers to interrogatories, or claims the amount garnisheed to be exempt, in whole or in part, including, but not limited to exemptions claimed for Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public assistance (welfare) benefits, alimony and child support, pensions, wage or other earnings for personal service, and non-ownership of the garnisheed property. Where personal services are compensated, but no amounts are required by law to be withheld, the amounts that would have been required to be withheld by law had the defendant been an employee of the garnishee are exempt.

(h)(i) If no request for hearing is filed. If the garnishee does not receive a copy of a request for hearing within 20 days after service of copies of materials required to be served by Subdivision (d)(iii), the garnishee shall pay Property Subject to Garnishment to plaintiff or plaintiff's attorney. If a request for hearing is not filed as provided for in this Rule and the time for doing so has expired and the writ issued was a prejudgment writ of garnishment, then the court or the clerk, upon plaintiff's request, shall issue an order to the garnishee to pay the Property Subject to Garnishment into court by delivery of such property to the sheriff or constable for that purpose. Property Subject to Garnishment that is paid into court pursuant to a prejudgment writ of garnishment or at any time when a request for hearing has been filed shall be held by the clerk pending order of the court.

(h)(ii) Effect of failure to request hearing. If the defendant or any other person to whom the materials required to be served by Subdivision (d)(iii) fails to request a hearing as provided for herein, then defendant and such other persons shall be deemed to have accepted as correct the garnishee's answers to interrogatories and the amounts stated therein to be not exempt from garnishment except as reflected in the answers to interrogatories.

(h)(iii) If a request for hearing is filed. If a request for hearing is filed by or on behalf of the defendant or by any other person, the court shall set the matter for hearing within ten (10) days from the filing of the request and serve notice of that hearing upon all parties and claimants by first class mail. If the court determines at the hearing that the writ was issued improperly, that the answers to interrogatories are inaccurate, or that any assets garnisheed are exempt from or are not subject to garnishment, the court shall immediately issue an order to the garnishee releasing such assets or portion thereof from the writ of garnishment. If the court finds that the assets or a portion thereof are subject to garnishment and not exempt, it shall issue an order to pay the Property Subject to Garnishment directly to plaintiff or plaintiff's attorney or as otherwise ordered by the court, except in the case of a prejudgment writ of garnishment where the order shall require that such property be paid into court by delivery of such property to the sheriff or constable for that purpose. Property Subject to Garnishment that is paid into court shall be held by the clerk pending order of the court.

(h)(iv) If the property is other than money or its equivalent. Where the property is other than money or its equivalent, the court shall order that the garnishee deliver such property to the sheriff, constable, deputy, or such other person designated by court order. In the case of a writ issued after judgment, the person to whom the property was delivered shall sell as much of such property as may be necessary to satisfy the judgment together with costs of the garnishment proceedings and deposit the proceeds into court to be distributed by order of the court. Any surplus of such personal property or the proceeds thereof necessary to satisfy the writ of garnishment shall be returned to the defendant unless otherwise ordered by a court of competent jurisdiction. In the case of a prejudgment writ, the person to whom the property is delivered shall maintain possession of the property until further order of the court.

(i) Reply to answer of garnishee; trial of issues; judgment (pre-judgment or after judgment). The plaintiff or defendant may, within 10 days after the service of any answers to interrogatories, file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and may also allege any matters which would charge the garnishee with liability except that all claims for exemptions to garnishment or non-ownership of property garnisheed shall be resolved under the procedures as otherwise provided for in Subdivision (h) herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried in the same manner as other issues



of like nature. Judgment shall be entered upon the verdict or finding the same as if the garnishee had answered according to such verdict or finding. Costs shall be awarded in accordance with the provisions of Rule 54(d).

(j) Proceedings on failure of garnishee to comply with rule (pre-judgment or after judgment). If a garnishee fails to answer interrogatories after payment of the required fee, or if any garnishee shall fail to send to the defendant the copy of the writ, answers to interrogatories, notice and applications required by Sections (d)(iii) of this Rule, the court may order the garnishee to appear before the court and show cause why the garnishee should not be held in contempt therefor and why the court should not order the garnishee to pay expenses and costs incurred by other parties to the proceeding as a result of garnishee's failure. After the garnishee has been personally served with an order to appear before the court and show cause, the court may make such orders as are just. Unless the court finds there was substantial justification for the garnishee's failure or that other circumstances make an award of expenses or costs unjust, the court shall order the garnishee to pay reasonable expenses, including attorney's fees, incurred as a result of garnishee's failure.

If a garnishee fails to serve upon the court answers to interrogatories or an Affidavit of Garnishee as to Continuing Garnishment but delivers to the court Property Subject to Garnishment, the plaintiff may obtain a release of such property by filing with the court 60 days after the writ of garnishment was issued, or, in the case of a continuing garnishment, 60 days after the Property Subject to Garnishment was delivered to the court, an Ex Parte Motion to Release Garnishment Funds and by mailing a copy of the motion to the defendant. The motion shall state the amount of the property delivered to the court by the garnishee, that the garnishee failed to answer the interrogatories or file an Affidavit of Garnishee as to Continuing Garnishment, that 60 days have elapsed since the issuance of the writ (or, in the case of a continuing garnishment, 60 days have elapsed since the Property Subject to Garnishment was delivered to the court), and that the defendant has made no objection to the garnishment. No earlier than 10 days after a copy of the motion is mailed to the defendant, the court may enter an order that the Property Subject to Garnishment shall be released to the plaintiff to be applied to the judgment against the defendant. If the defendant objects to such release of property, the defendant shall file an objection to the motion with the court prior to the order being entered and shall mail a copy of the objection to the plaintiff. The plaintiff

shall mail a copy of the executed order to the defendant.

(k) Release of garnishee for amount paid (pre-judgment or after judgment). Except as provided for herein, a garnishee who acts in accordance with this Rule shall be released from all demands by the defendant for all Property Subject to Garnishment that is paid, delivered or accounted for by the garnishee pursuant to this Rule.

(l) Interpleader of third persons (pre-judgment or after judgment). When any person other than the defendant claims or may claim that the property held in the possession, custody, or control of the garnishee pursuant to a Writ is not subject to garnishment, the court may on motion order that such claimant be interpleaded as a defendant to the garnishment action, and if not already subject to the jurisdiction of the court, provide for notice thereof, in such form as the court shall direct, together with service of a copy of the order upon such third-party claimant in the manner required for the service of a summons. Thereupon the garnishee may pay or deliver to the court such property held pursuant to the Writ, which shall be a complete discharge from all liability to any party for the amount so paid or property so delivered. The third-party claimant shall thereupon be deemed a defendant to the garnishment action and shall answer within 10 days, setting forth any claim or defense. In case of default, judgment may be rendered as in any other cases of default which shall extinguish any claim of such third-party claimant.

(m) Claims of garnishee against plaintiff or defendant (pre-judgment or after judgment). Every garnishee shall be allowed to retain or deduct out of the Property Subject to Garnishment all demands against the plaintiff and against the defendant of which the garnishee could have availed itself if the garnishee had not been served as garnishee, whether the same are at the time due or not so long as the claims are liquidated, but only to the extent that the amounts retained and deducted are applied to reduce a debt or other obligation of the plaintiff or defendant, except that should such property, otherwise subject to garnishment, be held as security for the payment of a debt or other obligation of the defendant to the garnishee, then such property need not be applied at that time but must remain subject to being applied at any time pending the payment in full of the debt or other obligation. In answering the interrogatories propounded to the garnishee, the garnishee shall specify the amount retained or deducted and the person against whom the claim is made. Amounts retained and deducted for amounts owed by the plaintiff to the garnishee shall also be applied in reduction of

any judgment amount rendered in favor of plaintiff and against defendant. All amounts properly garnisheed in excess of those amounts retained or deducted pursuant to this subdivision are subject to payment and distribution in accordance with this Rule.

(n) Liability of garnishee on negotiable instruments (pre-judgment or after judgment). No person shall be liable as garnishee by reason of having drawn, accepted, made or endorsed any negotiable instrument which is not in the possession, custody, or control of the garnishee at the time of service of the writ of garnishment.

(o) When garnishee is mortgagee or pledgee (pre-judgment or after judgment). When any Property Subject to Garnishment is mortgaged or pledged, or in any way held for the payment of a debt to the garnishee, the plaintiff may obtain an order from the court authorizing the plaintiff to pay the total amount of the obligation to the garnishee in accordance with the terms of the mortgage, pledge or obligation, and requiring the garnishee to deliver such Property Subject to Garnishment according to the order of the court upon payment to such garnishee of the total obligation.

(p) Where property is held to secure performance of other obligation (pre-judgment or after judgment). If the Property Subject to Garnishment secures any obligation other than the payment of money and if the obligation secured does not require the personal performance of the defendant and can be performed by the plaintiff or its designee, the court may, upon plaintiff's motion, authorize the plaintiff or its designee to perform the obligation or tender performance and that upon such performance, or any tender thereof which is refused, the garnishee shall deliver the Property Subject to Garnishment in accordance with the order of the Court.

(q) Disposition of property (pre-judgment or after judgment). The Property Subject to Garnishment under either Subdivision (o) or (p) of this Rule or the proceeds from the sale thereof shall be applied to the extent available, first to satisfy any costs of sale, then to repay any amount paid by the plaintiff to the garnishee to satisfy the obligation of the defendant to the garnishee, then to pay the costs to perform the obligation of the defendant to the garnishee for an obligation other than the payment of money, and then to satisfy the writ of garnishment.

(r) Order against garnishee for debt not due (pre-judgment or after judgment). When an order is made requiring a garnishee to pay an amount to the plaintiff or plaintiff's attorney or into court or otherwise provide property for disposition by the court and the same is not yet due to the defendant,

payment or providing of property shall not be required until such payment or property is otherwise due the defendant from the garnishee.

(s) Failure to proceed against garnisheed property (pre-judgment or after judgment). Notwithstanding any other provision of this Rule, if a plaintiff fails, within sixty days from the filing of the garnishee's answers to interrogatories, to secure and personally serve on the garnishee an order requiring the garnishee to pay the property garnisheed into court or as otherwise provided herein, then the writ, which commanded the garnishee to hold the amount or property, shall be released and the garnishee discharged without further order of the court. If the Property Subject to Garnishment or any part thereof has been deposited with the court and the writ of garnishment was issued in aid of the execution of a judgment or order for the payment of money, and the plaintiff fails, within sixty days from the filing of the garnishee's answers to interrogatories, to request a release of the property garnisheed from the court in accordance with Subdivision (h)(i), then the writ shall be released; the garnisheed property shall be returned to the garnishee; and the garnishee discharged without further order of the court. Property Subject to Garnishment deposited with the court pursuant to a prejudgment writ of garnishment shall be released only upon order of the court. A release under this subdivision may be stayed upon order of the court for good cause shown. Such order shall not be binding upon the garnishee until served upon it.

(t) Costs (pre-judgment or after judgment).

(t)(i) Costs shall be allowed as a matter of course to the plaintiff and against the defendant in the pursuit of any garnishee action instituted after judgment unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the garnishee action shall abide the final determination of the cause. Costs against the State of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(t)(ii) The plaintiff must serve upon the defendant a copy of a memorandum of the items of necessary costs and disbursements in the garnishee action or actions, and file with the court a like memorandum duly verified stating that the items are correct, the disbursements have been necessarily incurred in the garnishee action, and the items of costs have not been claimed in any previous memorandum. The memorandum or memoranda may be filed at any time after judgment is rendered but in no event later than five days after the receipt of funds that would pay the judgment in

full but for the payment of any costs associated with a garnishee action for which a memorandum or memoranda have not been filed with the court. A party dissatisfied with the costs claimed, may, within seven days after service of the memorandum of costs of the garnishee action, file a motion to have the costs taxed by the court.

(t)(iii) All costs incurred in garnishee actions prior to the rendering of a judgment shall be taxed according to Rule 54(d) of these rules.

(u)(i) A garnishment issued to enforce a judgment obtained by the Office of Recovery Services, within the Department of Social Services, for repayment of overpayments, as defined in [Utah Code Section 62A-11-202](#) or by the Department of Workforce Services for repayment of overpayments as defined in Utah Code Section 35A-3-602, shall continue to operate and require the garnishee to withhold the nonexempt portion of disposable earnings, as defined in [Utah Code](#) Subsection 62A-11-103 ~~(2)~~(4), at each succeeding earnings disbursement interval until the garnishment is released in writing by the court, ~~or the Office of Recovery Services,~~ or the Department of Workforce Services.

(u)(ii) The garnishment described in Subdivision (u)(i) may not exceed 25% of disposable earnings, as defined in [Utah Code](#) Subsection 62A-11-103 ~~(3)~~(4), or the amount permitted under Section 303(a) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(a), whichever is less.

(v) Writ of continuing garnishment on earnings.

(v)(i) "Continuing garnishment" means any procedure for withholding the earnings of a defendant for successive pay periods for payment of a judgment debt, other than a judgment for support. "Earnings" and "Disposable Earnings" shall have the meaning set forth in Subdivision (d) of this rule. In addition to garnishment proceedings otherwise available under this rule, in any case in which a money judgment is obtained in a court of competent jurisdiction, the plaintiff or plaintiff's assignee shall be entitled, in accordance with this subdivision, to have the clerk of the court issue a writ of continuing garnishment against any garnishee who may owe earnings to the defendant. The person who serves a writ of continuing garnishment, together with the notices required by this rule, on the garnishee shall note the date and time of such service on the copy served. A writ of continuing garnishment shall be subject to the same exemptions from garnishment and portion of aggregate disposable earnings of defendant subject to garnishment as are described in Subdivision (d) of this rule.

(v)(ii) To the extent that the earnings are not exempt from garnishment, the writ of continuing garnishment shall be a continuing lien on all disposable earnings due or to become due to the defendant from the date of service of the writ and continuing until the earlier of the following events:

(v)(ii)(A) 120 days has expired from the date of service of the writ or, in the case of multiple garnishments, 120 days from the date a garnishment becomes effective as described hereafter in Subdivision (v)(iii);

(v)(ii)(B) the end of the last pay period after the defendant's employment relationship is terminated;

(v)(ii)(C) the underlying judgment is stayed, vacated or satisfied in full;

(v)(ii)(D) the plaintiff releases the garnishment; or

(v)(ii)(E) the writ of continuing garnishment is dismissed, vacated, or stayed by a court of competent jurisdiction.

The plaintiff shall notify the garnishee in writing by first class mail within 5 days after a judgment is stayed, vacated, or satisfied or a writ of continuing garnishment is dismissed, vacated, or stayed by the court.

(v)(iii) Only one writ of garnishment (continuing or otherwise) shall be in effect and satisfied at one time. When more than one writ of garnishment has been issued against earnings due the same defendant and served on the same garnishee, the writs shall be satisfied in the order of service on the garnishee. Upon expiration of a writ of continuing garnishment, as provided in Subdivision (v)(ii) above, any other writ of continuing garnishment that has been issued and served upon a garnishee against earnings due the defendant shall then become effective and shall continue for the period described in Subdivision (v)(ii) above. No plaintiff may have issued more than one writ of continuing garnishment against the same earnings of any individual defendant during the term of the lien created by any writ of continuing garnishment previously issued and served in favor of that plaintiff. Any writ of continuing garnishment served upon a garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been served previously with one or more writs of garnishment against earnings and specifying the date on which all such liens previously served are expected to terminate.

(v)(iv) Garnishee shall answer any interrogatories and serve upon the defendant information as

required by Subdivisions (d) and (g) of this rule. Thereafter, the defendant shall have the right to request a hearing as provided in Subdivision (h) of this rule. If garnishee does not receive a copy of a request for hearing within 20 days after service of copies of materials required to be served by Subdivision (d)(iii), garnishee shall pay Property Subject to Garnishment from the first applicable pay period to plaintiff or plaintiff's attorney. Any hearing requested by the defendant outside of that provided for in Subdivision (h) shall be requested by motion to the court and held within the judge's sole discretion. Unless the writ shall terminate pursuant to Subdivision (v)(ii) above or unless a request for hearing has been served on the garnishee but there has been no subsequent court order, within 10 days after the end of each subsequent pay period, the garnishee shall deliver the Property Subject to Garnishment either to the plaintiff or to the plaintiff's attorney, together with an affidavit which shall state (1) whether the garnishee is indebted to the defendant for earnings, specifying the beginning and ending dates of the applicable pay period, and the total earnings for the pay period; (2) whether garnishee is retaining or deducting any amount in satisfaction of a claim the garnishee has against the plaintiff or the defendant, a designation as to whom such claim relates, and the amount retained or deducted; (3) the computation of the amount of defendant's accrued disposable earnings attached by the writ for the applicable pay period; and (4) that garnishee has served defendant with a copy of the writ of garnishment and notice of garnishment and exemptions as required by Subdivision (d) of this rule. Proceedings on failure of garnishee to comply with this Subdivision (v) shall follow Subdivision (j) of this rule. Reply to any answer or affidavit of garnishee completed pursuant to this Subdivision (v) shall follow Subdivision (i) of this rule.

(v)(v) Notwithstanding any other provision of this Subdivision (v), a writ of continuing garnishment issued to enforce a judgment obtained by the Office of Recovery Services, within the Department of Social Services, shall have priority over any other writ of continuing garnishment in accordance with Subdivision (u) of this rule. If a writ of continuing garnishment issued by the Office of Recovery Services is served during the term of a lien created by any other writ of continuing garnishment, the term of that lien shall be tolled and all priorities preserved until the expiration of the Office of Recovery Services writ.

(v)(vi) The plaintiff shall be responsible for insuring that the amounts garnished do not exceed the amount due on the judgment.

(v)(vii) Except as specifically noted in this Subdivision (v), all other provisions of this rule apply to this subdivision.